

**STATE OF DELAWARE**  
**PUBLIC EMPLOYMENT RELATIONS BOARD**

**IN THE MATTER OF:**

**DELAWARE DEPARTMENT OF LABOR,**

**AND**

**AMERICAN FEDERATION OF STATE,  
COUNTY AND MUNICIPAL EMPLOYEES,  
COUNCIL 81, LOCAL 2038.**

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**Representation Petition  
99-05-258**

RE: Dept. of Labor, Office of Administration  
Administrative Secretary

Appearances

*Jerry M. Cutler, State Labor Relations Service, SPO, for DOL  
Phillip Williams, for AFSCME Council 81*

The Delaware Department of Labor (“DOL”) is an agency of the State of Delaware and is a public employer within the meaning of §1302(n) of the Public Employment Relations Act (“PERA”), 19 Del.C. Chapter 13 (1994).<sup>1</sup> The Office of Administration is a division of the Department of Labor.

The American Federation of State, County and Municipal Employees, Council 81 (“AFSCME”), is an employee organization within the meaning of 19 Del.C. §1302(h).<sup>2</sup> AFSCME Local 2038 is the exclusive bargaining representative of a bargaining unit of all

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<sup>1</sup> “Public employer” or “employer” means the State, any county of the State or any agency thereof, and/or any municipal corporation, municipality, city or town located within the State or any agency thereof, which upon the affirmative legislative act of its common council or other governing body has elected to come within the former Chapter 13 of this title, which hereinafter election to come within this Chapter, or which employs 100 or more full-time employees. 19 Del.C. §1302(n).

<sup>2</sup> “Employee organization” means any organization which admits to membership employees of a public employer and which has as a purpose the representation of such employees in collective bargaining, and includes any person acting as an officer, representative, or agent of said organization.

organized DOL employees including employees in the Office of Labor Market Information, Commission for Women, Industrial Affairs Division, Unemployment Compensation Division, Office of Administration, and the Employment and Training Division, as defined in DOL Case 58.

On May 27, 1999, AFSCME filed with the Public Employment Relations Board (“PERB”) a Petition for Amendment or Clarification of Existing Certified Bargaining Unit, seeking a determination as to whether the position of Administrative Secretary in the Office of Administration was included in the existing bargaining unit. The petition was filed without any authorization cards in its support.

The State objected to the petition filed by AFSCME asserting the position was clearly not included in the existing unit definition and could only be made part of the unit through a modification process which requires a showing of support. Furthermore, the State asserted the position of Administrative Secretary constitutes a confidential position and is therefore ineligible for representation in any bargaining unit.

A hearing was convened on October 18, 1999, at which time the parties were afforded full opportunity to present evidence and argument in support of their positions. This decision results from the record created by the parties in this matter.

### **ISSUE**

- I. Is the position of Administrative Secretary, DOL Office of Administration included in the existing bargaining unit represented by AFSCME Local 2038?
- II. Does the Administrative Secretary in the DOL Office of Administration perform confidential duties within the meaning of 19 Del.C. §1302(e) and is therefore ineligible for representation by AFSCME Local 2038?

## **POSITIONS OF THE PARTIES**

### **AFSCME:**

AFSCME argues the Administrative Secretary position in the Office of Administration evolved from a predecessor Senior Secretary position. At the time the Senior Secretary position was reclassified in 1997, DOL did not raise an issue as to whether this was a bargaining unit position. AFSCME argues that because the position was retitled through the “critical reclassification” process does not mean that there was such a significant change in duties and responsibilities that the position should be taken out of the bargaining unit.

AFSCME asserts the State has failed to carry its burden in establishing the Administrative Secretary position is “confidential” within the meaning of 19 Del.C. §1302(e).

### **State:**

The State argues the Administrative Secretary position does not result from the retitling of the Senior Secretary position. To the contrary, the position was upgraded as a result of significant changes in the required duties and responsibilities. It notes the Critical Reclassification process can only be used “...whenever a significant change is made in the duties and responsibilities of a position involving either the addition of new assignments or the taking away or modification of existing assignments ...”, pursuant to Merit Rule 3.0800. The reorganization and consolidation of DOL functions in the Wilmington area to a single office building was the underlying reason the Senior Secretary’s position was assigned additional duties and responsibilities. The State argues the Administrative Secretary position in the Office of Administration is a new position which can only be added to the bargaining unit through the modification process, requiring support by the affected employee which the Union has been unable to obtain.

The State argued, in the alternative, the Administrative Secretary is a confidential employee within the meaning of 19 Del.C. §1302(e) and is, therefore, ineligible for representation for purposes of collective bargaining.

### **OPINION**

At all times relevant to this petition, the Department of Labor and AFSCME Local 2038 were parties to a collective bargaining agreement with a term of July 1, 1996 through June 30, 1999.

Prior to July 1, 1997, the secretary to the Director of the DOL Office of Administration was classified under the State of Delaware Classification System as a Senior Secretary at Paygrade 7. On or about May 7, 1997, the Director of Administration requested a Critical Reclassification of this position, based upon additional administrative duties and responsibilities which resulted from the reorganization and consolidation of DOL offices. The reclassification request was supported by the DOL Cabinet Secretary and was based upon a Job Analysis Questionnaire completed by the incumbent in the position, Yvonne Ennis. Effective July 1, 1997, the position was reclassified to an Administrative Secretary position at Paygrade 8.

Ms. Ennis remained in the Administrative Secretary position until July 16, 1998. The current incumbent, Ruth Fulton, was hired into the position on November 9, 1998.

#### **I. Bargaining Unit Status of Reclassified Position**

There is no dispute that the Senior Secretary in the Office of Administration was covered by the bargaining unit definition for the unit represented by AFSCME Local 2038 and was listed as a covered position in Addendum I to the 1996-1999 collective bargaining agreement.

The initial question posed was whether the Administrative Secretary position resulted from the retitling of the Senior Secretary position, such that the Administrative Secretary position

was included in the bargaining unit definition. Upon review of the evidence, it is clear that question is overly simplistic. Much of the confusion surrounding representation issues of this type devolves from the difficulties which arise in cases where bargaining unit composition is defined by listing specific position classifications rather than by unit description.

The first issue requiring resolution concerns the bargaining unit status of the Administrative Secretary position at the time of its reclassification. The collective bargaining agreement between DOL and AFSCME Local 2038 includes at Addendum I a listing of all bargaining unit positions. This agreement was executed on December 30, 1996, more than eight months before the position in question was reclassified.<sup>3</sup> Article 2, Union Recognition, §2.1 includes the following language:

The bargaining unit may be amended by agreement of the parties to include or exclude other related classifications.

For this reason, the simple reading of Addendum I does not resolve the status of the Administrative Secretary.

The record in this case does not indicate there was any disagreement between DOL and AFSCME Local 2038 as to the bargaining unit status of the Administrative Secretary at the time of the reclassification. The dues deduction records prepared by the employer and transmitted to the Union on December 15, 1997, and July 31, 1998 clearly indicate the employer continued to deduct union dues from the Administrative Secretary's wages through July 1998, when the incumbent vacated the position.<sup>4</sup> AFSCME Exhibit 2 (pages 5 –7).

Sections 9.1 and 11.12 of the collective bargaining agreement require the employer to maintain accurate and up-to-date bargaining unit seniority lists. The employer is required to provide a copy of the bargaining unit seniority list to the Local Union President biannually in

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<sup>3</sup> While the reclassification was effective on July 1, 1997, the final page of State Exhibit 3 reveals this effective date was retroactive, as the Secretary of Labor was advised the request for reclassification had been approved by the State Personnel Office on August 15, 1997.

January and June. The position of Administrative Secretary in the Office of Administration was included on the employer generated seniority lists of July 1, 1998 and December 31, 1998. AFSCME Exhibit 2.

It is undisputed that no question of appropriateness was presented for resolution by the Public Employment Relations Board nor was the bargaining unit status of the Administrative Secretary otherwise challenged at that time or at any time prior to the filing of this petition.

Based on the documentary evidence provided, the only reasonable conclusion is that, by tacit agreement of the parties, the position of Administrative Secretary, Office of Administration was included in the bargaining unit represented by AFSCME Local 2038 at the time of the reclassification.

## II. Confidential Status of Administrative Secretary position

The second issue raised in this matter concerns eligibility for representation. Section 1302(e) of the Public Employment Relations Act provides:

“Confidential employee” means any employee whose essential job function and advanced knowledge about the issues involved in collective bargaining would make it unduly burdensome for the employer to negotiate effectively if the employee were a member of an appropriate bargaining unit.

A position which satisfies this definition is excluded from the statutory definition of “public employee” and is therefore ineligible for representation for the purposes of collective bargaining under the Act.

A determination of confidentiality is dependent upon the specific facts of each case. The PERB set forth the following standard for reviewing the evidence in reaching a confidentiality determination in the Capital S.D. Benefits Specialist (Supra), decision:

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<sup>4</sup> Although Ms. Ennis vacated this position on July 16, 1998, because State payroll is lagged by two weeks, this indicates deductions from her wages for the last pay period she worked in this position.

In determining confidential status, the facts of each case must be examined to determine for whom the employee works, what that employee does and what knowledge and/or exposure the employee has to issues involved in collective bargaining. Finally a determination must be made as to whether, based upon the essential job functions and advanced knowledge regarding collective bargaining, the inclusion of the position within a bargaining unit compromises the employer's negotiating positions and make it unduly burdensome for the employer to effectively negotiate.

Only the Director of the Office of Administration, Dana Jefferson, testified concerning the confidential nature of the Administrative Secretary position. Dr. Jefferson testified she, as Director, has been designated by the current Secretary of Labor to manage the process for all Secretary-level grievances within the Department. She is responsible for reviewing grievances and appeals and drafting responses. She is also a member of the DOL bargaining team in collective bargaining negotiations with AFSCME Local 2038. As a member of management's negotiating team, Dr. Jefferson is involved in reviewing and drafting bargaining proposals and strategy memos.

The Administrative Secretary in the Office of Administration provides direct clerical and administrative support to the Director. Dr. Jefferson testified her Administrative Secretary has access to all of the Director's files and records, is involved in assembling "briefing books" in preparation for grievance hearings, maintains all grievance files and records as well as handling scheduling and correspondence relating to grievance processing, and sometimes sits in to take notes during management's grievance and negotiation strategy meetings. The Administrative Secretary is responsible for filing all of the Director's e-mails, including those which deal with strategies and input concerning grievances and negotiations. She also opens and sorts all of the Director's mail. Dr. Jefferson testified these functions are essential to her work as the Director and to the effective operation of the Department and her office. She testified there is no one else in her office who performs these types of supporting confidential tasks.

The confidential exclusion protects both the employer and the employees from inherent conflicts of interest which involve "the issues involved in collective bargaining." The test for

confidentiality is whether that function or knowledge unduly compromises the employer's ability to effectively negotiate. In RE: Capital School District Benefits Specialist, Del.PERB, Rep. Pet. 94-09-103, II PERB Binder 1175 (1995). The record in this case supports a finding the Administrative Secretary to the Director of the Office of Administration is a confidential employee within the meaning of 19 Del.C. § 1302(e).

### **DECISION**

For the reasons set forth herein, it is determined the Administrative Secretary to the Director of the DOL Office of Administration is a confidential employee within the meaning of 19 Del.C. §1302(e).

WHEREFORE, this position is ineligible for representation for the purposes of collective bargaining, as established by the Public Employment Relations Act.

**IT IS SO ORDERED.**

/s/Deborah L. Murray-Sheppard  
DEBORAH L. MURRAY-SHEPPARD  
PERB Hearing Officer

DATED: 5 January 2000